

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GHASSAN M. AZAR,

Plaintiff-Appellant,

v

CAROL ANN AZAR,

Defendant-Appellee.

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UNPUBLISHED

April 19, 2007

No. 265876

Macomb Circuit Court

LC No. 2004-000507-DO

Before: Judges Zahra, PJ, and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff Ghassan (Gus) Azar appeals as of right the property division in the judgment of divorce ending his marriage to defendant Carol Ann Azar.<sup>1</sup> We affirm. Plaintiff also appeals as of right the award of \$10,000 in attorney fees to defendant included in the judgment of divorce. We reverse this award of attorney fees to defendant.

The parties married on July 8, 2000, after a two-year courtship. This marriage was plaintiff's second and defendant's third, and each brought substantial premarital assets to the union. After the parties married, defendant moved to plaintiff's home on Alexander Street in St. Clair Shores and sold her condominium. Defendant also brought to the marriage a summer cottage on McDonald Island in Lake St. Clair, which the parties used as a vacation residence. Both properties were renovated around the time the parties married. In 2002, the parties moved to a larger home on Harbor Drive in Chesterfield Township. The parties began divorce proceedings in January 2004, and defendant purchased and moved to a condominium on Nature Drive in Chesterfield Township a few months later.

I. Division of Marital Homes

Plaintiff argues that the trial court erred when it awarded defendant a one-half interest in the appreciated value of the Alexander Street and Harbor Drive properties. Plaintiff argues that the Alexander Street property should not be included in the marital estate and divided between

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<sup>1</sup> In the judgment of divorce, defendant's maiden name of Koonter was restored.

the parties because he purchased the property before the marriage and was solely responsible for maintaining it during the marriage. Similarly, he argues that the trial court's decision to award defendant half the equity that accrued in the Harbor Drive home during the parties' marriage was inequitable because he purchased this home with his personal funds and was exclusively responsible for maintaining the home during the marriage. We do not agree.

When reviewing the trial court's award of property in a divorce action, we first review the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002). "This Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). See also MCR 2.613(C). If we uphold the trial court's findings of fact, we must then decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. We will affirm the dispositive ruling unless we are left with the firm conviction that the division was inequitable. *Id.* at 152.

MCL 552.19 controls the distribution of assets in the marital estate in a divorce proceeding. It states:

Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

Notably, MCL 552.19 only permits the trial court to distribute property that has "come to either party by reason of the marriage" to the divorcing spouses. Therefore, "[w]hen apportioning marital property, the court must strive for an equitable division of increases in marital assets 'that may have occurred between the *beginning* and the end of the marriage.'" *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), quoting *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986).

Accordingly, when dividing property in a divorce proceeding, the trial court must first identify what constitutes the parties' marital and separate assets. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Reeves, supra* at 494.

In *Reeves, supra* at 495-496, the defendant husband purchased and made all mortgage payments on a condominium that he and the plaintiff wife lived in together both before and after their marriage. The *Reeves* Court held that the trial court erred when it considered the entire equity value of the condominium as part of the marital estate. *Id.* at 496. Instead, it noted, "the down payment, the equity built up before the parties' marriage, and any appreciation that occurred before the parties' marriage should have been considered defendant's separate estate" because this constituted the equity in the condominium that accrued before the beginning of the

marriage. *Id.* at 495-496. However, the *Reeves* Court also noted, “[t]he sharing and maintenance of a marital home affords both spouses an interest in any increase in its value (whether by equity payments or appreciation) over the term of a marriage. Such amount is clearly part of the marital estate.” *Id.* Accordingly, equity accruing in a marital home over the period of the parties’ marriage is a marital asset and is subject to division in the judgment of divorce.

Although plaintiff purchased the Alexander Street property two years before the parties married, this house served as the marital home for the first two years of the marriage. The Harbor Drive property served as the marital home for approximately the last two years of the parties’ marriage. The trial court did not divide and distribute the entire value of these properties, but only calculated and distributed the equity that accrued in the properties during the parties’ marriage. These increases in the equity of the marital homes during the marriage are part of the marital estate and, accordingly, the trial court did not clearly err when it divided these assets between the parties pursuant to the judgment of divorce.

Further, the trial court did not clearly err when it awarded defendant half the equity that accrued in these properties during the parties’ marriage. The trial court found that the parties contributed equally to the marital estate. Accordingly, the equal division of the estimated amount of appreciation to these properties during the parties’ marriage is equitable.

Plaintiff argues that the trial court’s decision to divide equally the equity that accrued in the Alexander Street and Harbor Drive properties during the parties’ marriage was erroneous because he maintained and improved these properties exclusively with his personal funds and defendant neither specifically assisted in maintaining the properties nor contributed to the marital estate in general. However, plaintiff provides no evidence besides his assertions at trial to support these claims. Conversely, defendant maintained at trial that she assisted in renovating and decorating the Alexander Street house, and that she took responsibility for other marriage expenses. Specifically, defendant noted that she financed the renovation and maintenance of the McDonald Island cottage, which both parties used during the marriage, and remained responsible for the costs of her premarital condominium, although plaintiff either took the profits of its sale for himself or merged them with the marital estate. The trial court is in the best position to judge the credibility of witnesses. *Fletcher v Fletcher*, 447 Mich 871, 890; 526 NW2d 889 (1994). See also MCR 2.613(C) (“Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.”). Especially in light of the trial court’s award to plaintiff of half the appreciation in the value of the McDonald Island cottage that occurred during the parties’ marriage, the trial court’s award of half the appreciation in the value of the marital homes during the parties’ marriage is not clearly erroneous.

## II. Valuation of Alexander Street and McDonald Island Properties

Plaintiff argues that the trial court erred when it concluded that the value of the Alexander Street property appreciated by approximately \$164,000 during the parties’ marriage. Plaintiff also argues that the trial court erred when it concluded that the McDonald Island cottage was worth \$126,000 at the time of trial. We disagree. We review the trial court’s valuation of marital property for clear error. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

“[W]here a trial court’s valuation of a marital asset is within the range established by the proofs, no clear error is present.” *Id.* The trial court concluded that an appraisal on the house taken in 1997 provided the only credible assessment of the value of the Alexander Street property before the marriage, and adopted the appraised \$235,000 value as the premarital value of the property. The trial court recognized that this appraisal reflected the value of the property 30 months before the parties married, but noted that “no other relevant and credible evidence was offered for the Court’s consideration.” Similarly, the \$399,000 listing price of the home in 2004 constitutes the only evidence (besides plaintiff’s testimony) of the value of the Alexander Street home at the end of the parties’ marriage. The trial court properly concluded that these proofs constituted the only credible evidence establishing the value of the Alexander Street property at the beginning and the end of the parties’ marriage, and it did not clearly err when it relied on these values to determine that the value of the home appreciated by \$164,000 during the parties’ marriage.

Plaintiff argues that the trial court should have found that he spent \$155,000 on improvements to the property before the marriage and only \$10,000 on maintenance after he and defendant married. Accordingly, the trial court should have concluded that most of the appreciation in the value of the home occurred before the parties married. Further, plaintiff argues that the trial court should have determined that the current value of the Alexander Street property is less than the \$399,000 price at which the property was listed for sale, because he was unable to sell the property at this price. Apparently, he argues that the value of the appreciation in the Alexander Street property during the parties’ marriage was minimal. However, his assertions that the trial court’s valuation of the property at the beginning of the marriage was too low and its valuation of the property at the end of the marriage was too high are based entirely on his testimony at trial. The trial court noted that it did not find plaintiff’s testimony regarding the value of this property credible, and this Court defers to the trial court regarding matters of witness credibility. *Draggoo, supra* at 429. Accordingly, the trial court’s refusal to consider plaintiff’s unreliable testimony concerning the value of the Alexander Street property at the beginning and the end of the marriage was not clearly erroneous.

Similarly, the trial court did not clearly err when it determined that the McDonald Island cottage was worth \$126,000 at the time of trial. The trial court based this finding on evidence that plaintiff had purchased an insurance policy on the cottage for approximately this amount after the renovations were complete. Further, defendant testified that at the time of trial the cottage and leasehold were worth approximately \$150,000 and the cottage alone was worth approximately \$105,000. The trial court also noted that the lease would expire in 2012, and renewal of the lease by the state of Michigan was not guaranteed. Considering the information available to the trial court, its determination that the McDonald Island property was worth \$126,000 was within the range established by the proofs and, therefore, was not a clearly erroneous valuation of the property.

Although plaintiff argues that the trial court should have based its valuation of the McDonald Island property on an appraisal that he submitted in evidence valuing the cottage and property at \$330,000, the trial court did not find this evidence credible. Notably, the licensed appraiser who performed this evaluation had not personally inspected the property and based his evaluation on information regarding the property that was provided to him. “A reviewing court must treat the trial court’s findings with substantial deference in light of its superior ability to

assess the credibility of evidence.” *Rigoni v Michigan Power Co*, 131 Mich App 336, 341; 345 NW2d 918 (1984). The trial court, in an act of its discretion, concluded that the appraisal submitted by plaintiff was not a credible reflection of the value of the property and, instead, determined the value of the property based on other evidence presented at trial. Accordingly, the trial court’s valuation of the property at the time of trial was not clearly erroneous.

### III. Division of Nature Drive Property

Plaintiff alleges that the Nature Drive condominium increased in value by \$5,000 between the time defendant purchased the condominium and the entry of the judgment of divorce. He maintains that the trial court erred when it refused to award him half this increase in the value. To support his assertion that \$5,000 in equity accrued on the condominium during the parties’ marriage, plaintiff notes that the warranty deed for the condominium, dated April 29, 2004, indicated that defendant purchased the condominium for \$195,000, but that an appraisal conducted on November 8, 2004, indicated that it was worth \$200,000. However, after considering both documents, the trial court determined that that the purchase price of the condominium constituted a more reliable estimate of its value at the time of trial and concluded that no increase in the equity of the condominium occurred during the parties’ marriage. Plaintiff does not assert that the trial court erred when it concluded that no equity accrued on the condominium during the parties’ marriage. Instead, he merely alleges that the condominium increased in value during the parties’ marriage, although the trial court did not reach this conclusion. The trial court did not err when it failed to distribute the equity that accrued on the condominium during the parties’ marriage because it concluded that the condominium only experienced a *de minimus* increase in value and, therefore, there was no equity to distribute. Because plaintiff’s argument is based on a misstatement of the trial court’s holding, we will not consider it further.

### IV. Liability for Outstanding Attorney Fees

Plaintiff claims that the trial court erred when it held the parties equally responsible for the attorney fees arising from litigation associated with the McDonald Island cottage. We do not agree. "The goal of a court when apportioning a marital estate is to equitably divide it in light of all the circumstances."<sup>2</sup> *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005). Both

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<sup>2</sup> The following factors may be considered to determine if an equitable division of the marital estate has been reached:

- (1) duration of the marriage, (2) contributions of the parties to the marital estate,
  - (3) age of the parties, (4) health of the parties, (5) life status of the parties,
  - (6) necessities and circumstances of the parties, (7) earning abilities of the parties,
  - (8) past relations and conduct of the parties, and (9) general principles of equity.
- [*McNamara*, *supra* at 185, quoting *Sparks*, *supra* at 159-160.]

Because of the wide array of factors to consider in a divorce proceeding, the determination whether a particular factor is relevant to determine the equitable division of a particular couple’s property is one of fact and no rigid framework for applying these factors exists. *McNamara*,  
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parties were leaseholders of the property at the time of the litigation and they intended to use the cottage as a marital vacation residence. As the trial court noted, at the time the litigation commenced, plaintiff had an interest in the appreciation of the value of this marital residence, which would be affected by the litigation. Further, testimony presented at trial indicated that both parties were actively involved in defending their leasehold interest in the property and pursuing their counterclaim. Finally, plaintiff does not dispute the propriety of the trial court's decision to award him half the appreciation in the value of the McDonald Island property that occurred during the parties' marriage. Considering this information available to the trial court, its decision to hold the parties equally liable for the outstanding costs and fees incurred in this litigation was equitable.

#### V. Award of GMC Yukon to Defendant

Plaintiff argues that the trial court erred when it awarded defendant the GMC Yukon without compensating plaintiff for his interest in the vehicle. We disagree. Again, when dividing marital assets, "the goal is to reach an equitable division in light of all the circumstances." *McNamara, supra* at 188. The parties do not dispute that defendant purchased the Yukon and made payments on this vehicle with money she had saved and that she was the primary driver of the vehicle. The other vehicle awarded to her, a 1994 Pontiac Firebird, is four years older than defendant's car. Further, the trial court awarded to plaintiff the only other disputed vehicle, a \$26,000 airboat titled in both parties' names. Accordingly, we are not firmly convinced that the trial court's decision to award the entire value of the Yukon to defendant was inequitable.

#### VI. Attorney Fees

Finally, plaintiff argues that the trial court erred when it ordered him to pay defendant \$10,000 in attorney fees. We agree. Pursuant to MCL 552.13, the trial court has the discretion to award attorney fees in divorce actions. Accordingly, we review the trial court's award of attorney fees in a divorce action for an abuse of this discretion. *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001).

In *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997), this Court stated,

A court may award a party in a divorce action "any sums necessary to enable the . . . party to carry on or defend the action, during its pendency." MCL 552.13(1); MSA 25.93(1). An award of legal fees in a divorce action is authorized when it is necessary to enable the party to carry on or defend the suit. MCR 3.206(C)(2); *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). They may also be awarded when the party requesting payment has been forced to incur them as a result of the other party's unreasonable conduct in the

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*supra* at 185-186. Regardless, the trial court may not give disproportionate weight to any particular factor. *Id.* at 186.

course of the litigation. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992).

However, in its opinion and order in this case, the trial court did not find that an award of attorney fees was necessary to permit defendant to receive adequate representation in the judgment of divorce or to compensate defendant for costs and fees that she was forced to incur as a result of unreasonable conduct by plaintiff. Instead, the trial court awarded attorney fees to defendant because the parties' financial positions were not equal. Although this financial inequality between the parties could have supported an award of attorney fees if the trial court also found that defendant needed financial assistance to defend herself in the divorce proceedings, see *Reed, supra* at 164, the trial court did not make such a finding. The trial court was not authorized to award attorney fees to defendant merely because she and plaintiff had unequal financial situations. Accordingly, the trial court failed to provide an appropriate basis for its award of attorney fees to defendant.

We reverse the trial court's award of \$10,000 in attorney fees to defendant and remand for further proceedings consistent with this opinion. We affirm the trial court in all other respects. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens